IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

OP.No. 19612 of 2002(I)

PETITIONER:

V.A. ILYAS, S/O. ABDU,
VALIYAVEETTIL HOUSE, EDAVANAKKAD.

BY ADV. SRI.P.M.POULOSE
SRI.MANZOOR ALI K.A.
SRI.RAJESH.C.

RESPONDENTS:
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1. **STATE OF KERALA,**
   REP. BY THE SECRETARY TO THE GOVERNMENT,
   LABOUR & REHABILITATION DEPARTMENT, TRIVANDRUM.

2. **THE DISTRICT EXECUTIVE OFFICER,**
   KERALA MOTOR TRANSPORT WELFARE FUND BOARD,
   PALARIVATTOM, COCHINI-682 025.

3. **THE DEPUTY TAHSILDAR (R.R),**
   TALUK OFFICE, COCHIN.

4. **THE VILLAGE OFFICER, EDAVANAKKAD.**

5. **V.A.M.SAGEER, S/O. ABDU,**
   VALIYAVEETTIL HOUSE, EDAVANAKKAD.

6. **V.A.SAJITH, S/O. ABDU,**
   VALIYAVEETTIL HOUSE, EDAVANAKKAD.

7. **MAJEED, S/O. MOHAMMED,**
   CHETTIPARAMBIL HOUSE, EDAVANAKKAD.

BY SR. GOVERNMENT PLEADER SRI. P.K. RAVIKRISHNAN
BY ADV. SRI. P. RAMAKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.19612/2002 I

ORDER ON CMP.NOS.33612 AND 43715/2002 IN OP.NO.19612/2002 I

DISMISSED

12/03/2007 **SD/-S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER DTD. 09/03/2000.**

EXT.P2: **COPY OF THE CERTIFICATE DTD. 8/07/2002 ISSUED BY THE VILLAGE OFFICER, EDAVANAKKAD.**

EXT.P3: **COPY OF THE NOTICE DTD. 17/06/2002 ISSUED BY THE 4TH RESPONDENT.**

EXT.P4: **COPY OF THE DEMAND NOTICE DTD. 2/08/2002UNDER SECTION 7 OF R.R. ACT.**

EXT.P5: **COPY OF THE NOTICE DTD. NIL ISSUED UNDER SECTION 34 OF R.R.ACT.**

/TRUE COPY/

KSS

S.SIRI JAGAN .J

O.P No. 19612 of 2002

Dated this the 12th day of March 2007

JUDGMENT

The petitioner who is the owner of a Motor Transport undertaking challenges Ext.P1 order of the Government passed in appeal against the order of the 2nd respondent assessing contributions under the Kerala Motor Transport Workers Welfare Fund Act. In respect of seven employees namely Messrs. Shobanan, Sunil Kumar, Dileep Santhosh, Radhakrishnan, Robin and Suresh. The Government found that those employees could not have been regarded as employees of the petitioner and to that extent set aside the assessment order. But relying on the depositions of the petitioner and his brother that Messrs Sajeed, Saheer and Majeed were employees of the petitioner the Government directed the 2nd respondent assessing authority to assess contribution in respect of the said Messrs. Sajeed, Saheer and Majeed. The petitioner's contention is that the said Sajeed Saheer and Majeed are not employees receiving wages from the petitioner. Out of the three Sajeed and Saheer are direct brothers of the petitioner and Majeed is his cousin brother to whom no wages are paid by the petitioner. According to the petitioner, since the contributions are payable only in respect of employees employed for wages the direction of the Government

to assess contribution in respect of the said persons is clearly unsustainable.

2. The learned counsel appearing for the 2nd respondent stoutly opposes the contention of the petitioner. According to him those 3 employees are admitted employees of the petitioner and therefore are liable to be included in the assessment for contributions under the Act and the fact that they are brothers or cousin brother is irrelevant. He also disputes the contention of the petitioner that they were not receiving wages. According to the 2nd respondent this is a ruse to get over payment of contributions under the Act.

3. I have considered the rival contentions in detail. I am of opinion that when the original assessment order has been set aside the assessing authority ought to have remanded the matter to the 2nd respondent assessing authority to consider the question as to whether Messrs. Sajeed, Saheer and Majeed are liable to be included as employees of the petitioner for the purpose of assessing contributions instead of directing the assessing authority to assess contributions in respect of those persons. This is all the more so since the petitioner did not have an opportunity to show otherwise as the assessing authority had no such case.

Therefore I quash Ext.P1 to the extent of directing the 2nd respondent to assess contributions in respect of three persons i.e Messrs Sajeed Saheer and Majeed. I further direct the 2nd respondent assessing authority to consider whether the said Messrs. Sajeed, Saheer and Majeed are liable to be included as employees of the petitioner and whether the petitioner is liable to pay contributions in respect of the same after affording an opportunity to the petitioner to adduce evidence . The Original Petition is disposed of as above.

S.SIRI JAGAN .JUDGE

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